

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEROY WILLIAMS and DEPARTMENT OF NAVY,
MARINE CORPS, Camp LeJeune, NC

*Docket No. 00-142; Submitted on the Record;
Issued January 17, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 27, 1997.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on June 27, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁴ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁶

On July 8, 1997 appellant, then a 42-year-old motor vehicle operator, filed a claim alleging that on June 27, 1997 he hurt his right arm while driving and steering his vehicle at work. He stopped work on June 30, 1997 and returned to work on July 8, 1997. By decision dated August 26, 1997, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury or was diagnosed with a medical condition in connection to the accepted June 27, 1997 employment incident. By decisions dated March 31 and August 20, 1999, the Office, after performing a merit review, denied modification of its prior decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a June 27, 1997 employment injury.

In support of his claim, appellant submitted a July 1, 1997 medical report from Dr. Leo E. Waivers, a Board-certified internist, who noted a history of right biceps pain which began when appellant was driving in his truck at work. Physical examination revealed no trapezius tenderness, but point tenderness along medial aspect of the right biceps with minimal swelling, no erythema or warmth. Positive pain with flexion of the biceps and with elevation of the arm above the horizontal. Dr. Waivers opined that appellant had “right arm pain -- most likely bicipital tendinitis, could be early rotator cuff but doubtful.” Appellant was advised to stay out of work until his symptoms resolved. Dr. Waivers submitted various progress reports and disability notes concerning appellant’s condition until he advised that appellant could return to work on August 11, 1997. In a May 10, 1999 report, Dr. Waivers repeated his initial findings by referring to his medical notes. The record contains no other medical evidence.

The Board finds that the reports of Dr. Waivers are of diminished probative value as they do not contain a definite diagnosis or medical condition related to the employment incident of June 27, 1997. Although Dr. Waivers advised that appellant’s condition was “most likely bicipital tendinitis” he also stated that it “could be early rotator cuff but doubtful.” Inasmuch as Dr. Waivers failed to provide a definite diagnosis and merely discussed the possibility of what appellant’s symptoms could be, his opinion is speculative and equivocal in nature and thus insufficient to establish that appellant sustained an injury due to an employment factor.⁷

The record does not contain a reasoned medical opinion, based on a complete factual and medical background, as to a medical condition commencing on or after June 27, 1997 and the

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁶ *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

⁷ *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in nature have little probative value).

accepted employment incident. It also fails to contain a reasoned opinion establishing a medically diagnosed condition as causally related to compensable work factors on or after June 27, 1997. Accordingly, appellant has not met his burden of proof in this case.

The decisions of the Office of Workers' Compensation Programs dated August 20 and March 31, 1999 are affirmed.

Dated, Washington, DC
January 17, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member